

S.D.N.Y. – N.Y.C.
16-cv-4959
03-cr-1102
Cote, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of August, two thousand twenty.

Present:

Jon O. Newman,
Rosemary S. Pooler,
Peter W. Hall,
Circuit Judges.

USDC SDNY
DOCUMENT
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DATE FILED: Aug 21 2020

Joel Ubiera,

Petitioner-Appellant,

v.

16-3305

United States of America,

Respondent-Appellee.

Appellant moves for a certificate of appealability, vacatur of the district court's order denying his 28 U.S.C. § 2255 motion, and remand for further proceedings. Upon due consideration, it is hereby ORDERED that the motions are GRANTED, the district court's order denying Appellant's § 2255 motion is VACATED in light of *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019), and the case is REMANDED for further proceedings.* See 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); see also 28 U.S.C. § 2106; *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (discussing circumstances warranting summary vacatur and remand).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

Catherine O'Hagan Wolfe

* For present purposes, we rely on the Appellant's description of the predicate underlying his 18 U.S.C. § 924(c) conviction, which the Government has not disputed. The plea agreement and guilty plea colloquy have not been provided to this Court.